No. 5 orig.

In the Supreme Court

of the United States

October Term, 1941

THE STATE OF COLORADO, *Complainant,*

vs.

THE STATE OF KANSAS and THE FINNEY COUNTY WATER USERS' ASSOCIATION, a Corporation, *Defendants.*

ORIGINAL

Application of Defendants for an Order Directing the Procedure for Submission of the Cause to the Court.

JAY S. PARKER,
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Topeka, Kan.

ELDON WALLINGFORD,
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W. E. STANLEY,
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Solicitors for the State of Kansas.

W. E. STANLEY,
Solicitor for The Finney County Water Users' Association, a Corp.

19-3214

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Come now the State of Kansas and The Finney County Water Users' Association, a corporation, defendants above named, and show to the court:

I

That this cause was instituted at the October, 1927, term of this court and involves a controversy between the State of Colorado and the State of Kansas to determine the rights of the parties in and to the waters of the Arkansas river and with respect to other matters as more fully appears by the bill and answer.

II

That on the 28th day of May, 1929, this court appointed M. S. Atwood, Esquire, as stenographic commissioner to take the testimony in the cause and transcribe the same; it then being the practice that following the taking of testimony, the cause would be heard by the court upon the bill, answer and printed record.

That thereafter the taking of testimony proceeded before the stenographic commissioner, M. S. Atwood, at various times and places, full opportunity having been afforded all parties for the introduction of all testimony desired.

That on the 21st day of December, 1939, both parties having rested, the taking of testimony was closed and completed. That the said completed testimony consists of 36 volumes, or a total of 6,361 typewritten legal cap pages and 316 exhibits.

III

That immediately subsequent to the completion of the testimony, counsel for the defendants herein suggested immediate steps to prepare the record for presentation to this court and were met with the suggestion from counsel for complainant that "since all the pertinent facts material to this controversy had been exhaustively

developed and are now in the record that an earnest effort be made to arrive at the terms of a consent decree which might be entered in this court."

To these suggestions to negotiate for such a compromise, counsel for defendants agreed and since the 1st of January, 1940, parties hereto have been engaged in efforts to effect a compromise and settlement of said litigation. These efforts have but recently failed and only proved to have unnecessarily delayed the final determination of this cause and it now becomes necessary that the cause be submitted by the parties to this court for its determination as promptly as possible.

IV

The parties hereto have been informed by the clerk of this honorable court that whereas at the time the bill of complaint was filed in this case, it was the practice of the court to appoint a commissioner to take testimony and following that to hear the case on the bill, answer and printed record; that more recently it has been the practice for the court to appoint a special master to take testimony and file a report, together with findings of fact and conclusions of law. Opportunity then being afforded counsel to except to the findings and orally argue upon those exceptions.

V

The defendants herein desiring to present this matter to this court for its determination as soon as practicable and in view of the fact that the taking of testimony has been completed before the stenographic commissioner and both parties having rested and the taking of testimony closed, the defendants, under such existing circumstances as are herein set out, respectfully request directions as to the methods which this court desires the parties to follow in submitting this controversy to the court for its determination, namely, whether the same should be continued as originally contemplated and submitted on the bill, answer and printed record, or whether a special master should be appointed to whom the testimony already taken and completed would be presented and who could then file with the court upon the basis of such testimony a report, together with findings of fact and conclusions of law.

VI

Defendants respectfully request that

(a) In the event this honorable court prefers to have the testimony heretofore completed submitted to it upon the bill, answer and printed record that an order be entered fixing a time for the submission of abstracts and briefs, or

(b) If the court prefers that the testimony heretofore completed be submitted to this court upon the report of a special master, together with findings of fact and conclusions made by such special master, the defendants request that an order be entered appointing a special master to consider the completed testimony and record taken before Commissioner Atwood appointed by this court in such form and manner as the court may direct.

All of which is respectfully submitted.

JAY S. PARKER,
Attorney General of the State of Kansas,
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ELDON WALLINGFORD,
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W. E. STANLEY,
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Solicitors for the State of Kansas.

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Defendants.

MOTION OF COMPLAINANT, STATE OF COLORADO.

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Attorneys for Complainant.

CLARK QUICK-PRINTING CO., LAWRENCE 1332-34, DENVER, COLO.

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MOTION OF COMPLAINANT, STATE OF COLORADO.

The State of Colorado, Complainant above named, appearing by Gail L. Ireland, its Attorney General, upon the direction of the Hon. Ralph L. Carr, Governor of the State of Colorado, respectfully presents this motion for the appointment of a Special Master and says: